

AN ORDINANCE
BY COUNCILMEMBER ANNE FAUVER

06-0-2476

AN ORDINANCE TO AMEND SECTIONS 138-14 (d) AND 138-103 OF THE CODE OF ORDINANCES SO AS TO IMPLEMENT A SIDEWALK INSPECTION, REPAIR, AND NOTICE PROCESS PERTAINING TO DAMAGED SIDEWALKS WHICH ABUT THE PUBLIC RIGHT-OF-WAY; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") desires to maintain sidewalks in good repair; and

WHEREAS, Section 138-14 of the City Code of Ordinances ("Code") outlines the required maintenance of sidewalks so as to keep sidewalks in good condition; and

WHEREAS, Section 138-103 of the City Code establishes an inspection and repair process for damaged sidewalks along public right-of-way; and

WHEREAS, there is no formal process for notifying abutting property owners of their obligation to repair damaged sidewalks along public right-of-way; and

WHEREAS, the primary responsibility and authority for the enforcement of the provisions of Section 138 of the City Code is vested in the Commissioner, Department of Public Works.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA as follows:

Section 1: Article II, Division 1, Chapter 138, Section 138-14 (d), which reads:

138.14. Maintenance of sidewalk area.

(d) *Damaged sidewalk abutting the right-of-way.* When the sidewalk abutting the right-of-way is damaged, it is the obligation of the abutting property owner to repair such sidewalk upon notice from the department of public works. If after receiving such notice, the abutting property owner fails to repair the sidewalk within a reasonable time, the department of public works is authorized to make such repairs and assess the abutting property owner for costs incurred.

be hereby deleted in its entirety.

Section 2: Article IV, Division 3, Chapter 138, Section 138-103, which reads:

Sec. 138-103. Inspection and repair of sidewalks.

The commissioner of public works is authorized to inspect the sidewalks along public right-of-way, to see that the sidewalks thereon are in a safe and suitable condition for public use and travel, to condemn promptly pavements on such sidewalks that are unsafe or unsuitable for public travel, and to cause repairs to be made in accordance with city law and to charge the cost of the repair to the abutting property owner.

be hereby amended to read as follows:

Sec. 138-103. Inspection and repair of sidewalks.

(a) *Authority.* The primary responsibility and authority for the enforcement of the provisions of this code shall be vested in the commissioner or his or her designee, department of public works.

(b) *Damaged sidewalk abutting the right-of-way.* When the sidewalk abutting the right-of-way is damaged, it is the obligation of the abutting property owner or entity to repair such sidewalk.

(c) *Determination of severity of sidewalk disrepair; Issuance of Corrective Action Notice.* Pursuant to this section, the City will inspect those sidewalks abutting the right-of-way to determine compliance with Section (b) above. Whenever the commissioner determines that a sidewalk does not conform with the provisions of section (b) above, he or she shall make a determination as to the severity of the sidewalk's disrepair and cause a written corrective action notice to be served upon the owner or occupant as may be appropriate.

(1) *Severe disrepair.* Sidewalks deemed to be in severe disrepair shall be issued a corrective action notice designating no more than ten (10) business days to comply with the notice's outlined remedial action. Upon failure to comply within the given timeframe, the property owner shall be issued a citation, which shall be answerable in court.

(2) *Non-severe disrepair.* Sidewalks deemed to be in non-severe disrepair shall be issued a corrective action notice designating no less than thirty (30) days and no more than forty-five (45) days to comply with the notice's outlined remedial action. Upon failure to comply within the given timeframe, the property owner shall be issued a citation, which shall be answerable in court.

(d) *Contents of corrective action notice.* Such notice shall include:

(1) An enumeration of conditions which the commissioner has determined to be in violation of this code and an enumeration of remedial action required for each violation;

(2) A specified period of time, based on the severity of the violation, within which such remedial action must be completed, including, if necessary, separate reasonable completion dates for remedial action as to separate violations, such periods of time to be determined by the commissioner as those periods of time reasonably required under all the circumstances then known, for the completion of all such remedial action;

(3) A statement adequate to notify the person or entity served that a failure to comply with the provisions of this code within the time set out in the notice is unlawful and will result in the issuance of a citation, answerable in court.

(e) *Perfection of notice and citation.* Notices and/or citations shall be deemed perfected if served upon the owner or occupant as may be appropriate, by causing the notice to be delivered as follows:

(1) In person; or

(2) By regular and certified mail with return receipt attached; or

(3) By posting a copy on the door of the owner's place of residence or usual place of abode and by mailing, via first class, a copy of the notice to the owner's address; or

(4) By leaving a copy at said owner's property with a person of suitable age or discretion residing therein; or

(5) By transmitting, via any of the aforementioned means, a copy to the owner's agent authorized by appointment or by law to receive service of process.

(f) *Filing of notice.* A copy of such notice and citation shall be filed in the office of the commissioner, department of public works.

(g) *Actual or constructive knowledge of issuance of corrective action notice.* A purchaser, transferee, or mortgagee who, prior to such sale, transfer, or mortgage, has actual or constructive knowledge of the issuance of a notice pursuant to this section shall be bound by such notice as of the date of such sale, transfer, or mortgage.

(h) *Notice of Change in Ownership.*

(1) *Ownership Transfer.* Within thirty (30) days after the transfer of ownership of any property for which a current corrective action notice is issued, the transferor shall file with the department of public works, a notice of such transfer, identifying the property by street name and

number and containing the name, address and telephone number of the successor in interest;

- (2) *Death or Dissolution of Owner.* Within thirty (30) days after the death of a person or dissolution of an entity for which a current corrective action notice is issued, the heirs, executor, administrator or legal representative of the estate or successor shall file with the department of public works a notice identifying the property by street name and number and stating the fact of the owner's death or dissolution and the name, address and telephone number, if known, of the successor in interest.

(i) *Further Violations.* Failure to comply with Subsection h (1) and (2) shall constitute further violations of this code; provided that such failure shall not result in a violation if such information is submitted within a reasonable time after notice. The contents of such notice for violations pursuant to Subsection h (1) and (2) shall specify the reasons for the violation, list any corrective measures required, and the amount of time allowed for corrective action.

(j) *Compliance with Notice.* After the person or entity, upon whom the corrective action notice has been served, satisfactorily completes the required repairs, that person or entity shall notify the commissioner. If the commissioner determines that the required repairs have been satisfactorily completed, the file on said notice shall be marked "complied" and shall be filed pursuant to law. Upon receipt of written request from said person or entity, a letter certifying such compliance with the notice shall be mailed to said person or entity.

(k) *Charges, summons, penalty.*

(1) *Charges answerable in court.* Upon the failure of the owner or agent, upon whom the notice is served, to correct the violation specified, the commissioner shall be authorized to issue to such owner or agent a written citation, directing such owner or agent to appear before the court at a specified time and place to answer the charges.

(2) *Hearings; Orders.*

(a) The court shall hear the evidence and determine whether or not the person or entity named in the summons has violated this code as charged. The court shall enumerate the conditions that it determines are in violation of this code and impose or require appropriate penalties for each such violation.

(b) The court shall issue a written finding of fact and conclusion of law incorporating the enumerated conditions and penalties referred to in Subsection (k)(3) herein below and shall provide a copy of said order to the defendant and commissioner.

(3) *Penalties.* Failure to comply with any provision of this code shall constitute an offense and shall be punishable as follows:

- (a) Each separate violation of this code shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00) or imprisonment for not more than 60 days or both.
- (b) Where a person shall be convicted of more than one offense and sentenced to imprisonment, said sentences shall be served concurrently; provided however, the judge may in his/her discretion, direct that these sentences run severally if said sentence would not exceed 180 days.
- (c) Any or all penalties prescribed in this subsection may be imposed upon the appropriate officers or partners of a corporation, partnership or other legal entity for the failure to comply with any provision of this code.
- (d) *Separate offenses.* Any person or entity failing to comply with any provision of this code shall be guilty of an offense. Each and every day the condition is maintained or the activity is conducted after the expiration of the time given to comply with any provision of this code shall constitute a separate offense as to each violation of the code and shall be punishable as provided in subsection (3) hereinabove.
- (e) Any person who knowingly and willingly aids another in violating the provisions of this code shall be a party to the offense and shall be subject to the penalties provided herein.

Section 3: That all ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

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